

CHAPTER 113: PEDDLERS, SOLICITORS AND TRANSIENT MERCHANTS

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' 113.01 DEFINITIONS.

Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

NON-COMMERCIAL DOOR-TO-DOOR ADVOCATE. A person who goes house-to-house, door-to-door, business-to-business, street-to-street or any type of place-to-place movement, for the primary purpose of disseminating religious, political, social, or other ideological beliefs. For purposes of this chapter, the term ***DOOR-TO-DOOR ADVOCATE*** shall include door-to-door canvassing and pamphleteering intended for non-commercial purposes.

PEDDLER. A person who goes from house-to-house, door-to-door, business-to-business, street-to-street, or any type of place-to-place movement, for the purpose of offering to provide any labor or service with immediate performance thereof, or offering for sale, displaying or exposing for sale, selling or attempting to sell, and delivering immediately upon sale, the goods, wares, products, merchandise, or other personnel property that the person is carrying or otherwise transporting. For purposes of this chapter, the term ***PEDDLER*** shall have the same common meaning as the term ***HAWKER***.

PERSON. Any natural individual, group, organization, corporation, partnership or similar association.

PROFESSIONAL FUNDRAISER. Any person, including a corporation or other entity, who, for compensation, performs any solicitations or other services for a religious, political, social or other charitable organization.

SOLICITOR. A person who goes from house-to-house, door-to-door, business-to-business, street-to-street, or any other type of place-to-place movement, for the purpose of obtaining or attempting to obtain orders for goods, wares, products, merchandise, other personal property, or services of which he or she may be carrying or transporting samples, or that may be described in a catalog or by other means, and for which delivery or performance shall occur at a later time. The absence of samples or catalogs shall not remove a person from the scope of this provision if the actual purpose of the person's activity is to obtain or attempt to obtain orders as discussed above. For purposes of this chapter, the term **SOLICITOR** shall have the same meaning as the term **CANVASSER**.

TRANSIENT MERCHANT. A person, other than a peddler or solicitor, who engages in, does or transacts any temporary or transient business in the county, either in 1 locality or in traveling from place to place in the county, offering for sale or selling goods, wares, services, merchandise, or commodities of any kind, and includes those merchants who, for the purpose of carrying on such business, hire, lease use or occupy any building, structure, motor vehicle or real estate.
(Ord. 09-06-02, passed 9-6-2011)

' 113.02 EXCEPTIONS TO DEFINITIONS.

(A) For the purpose of this chapter, the terms **PEDDLER**, **SOLICITOR** and **TRANSIENT MERCHANT** shall not apply to:

(1) *Non-commercial door-to-door advocates.* Nothing within this chapter shall be interpreted to prohibit or restrict non-commercial door-to-door advocates. Persons engaging in door-to-door advocacy shall not be required to register as solicitors as set out herein;

(2) Any person selling or attempting to sell at wholesale any goods, wares, products, merchandise, or other personal property to a retail seller of the items being sold by the wholesaler;

(3) Any person who makes initial contacts with other people for the purpose of establishing or trying to establish a regular customer delivery route for the delivery of perishable food and dairy products, such as baked goods or milk;

(4) Any person making deliveries of perishable food and dairy products to the customers on his or her established delivery route;

(5) Any person making deliveries of newspapers, newsletters, or other similar publications on an established customer delivery route, when attempting to establish a regular delivery route, or when publications are delivered to the community at large;

(6) Any person conducting the type of sale commonly known as garage sales, rummage sales, or estate sales;

(7) Any person participating in an organized multi-person bazaar or flea market;

(8) Any person conducting an auction as a properly licensed auctioneer;

(9) Any officer of the court conducting a court-ordered sale.

(B) Exemptions from these definitions shall not, for the scope of this chapter, excuse any person from complying with any other applicable statutory provision or requirement provided by any other ordinance. (Ord. 09-06-02, passed 9-6-2011)

' 113.03 LICENSING; EXEMPTIONS.

(A) *State permit required.* No person shall conduct business as a transient merchant within the county without first having obtained the appropriate permit as required by KRS 365.665 as it may be amended from time to time.

(B) *County license required.* Except as otherwise provided for by this chapter, no person shall conduct business within Shelby County as a peddler or a transient merchant without first obtaining a county license. Solicitors and professional fundraisers need not be licensed, but are required to register with the county as set out herein.

(C) *Application.* An application for a county license to conduct business as a peddler or transient merchant shall be made at least 10 regular business days before the applicant desires to begin conducting a business operation within the county. Application for a license shall be made on a form approved by the Shelby County Fiscal Court and available from the office of the Shelby County Clerk. All applications shall be signed by the applicant and shall include the following information:

(1) The applicant=s full legal name and the full legal names of all agents, employees or other persons who will be assisting in conjunction with the licensed/registered business operation;

(2) The name of the business and all other names under which the applicant does or has conducted business, or to which the applicant will officially answer to;

- (3) Full address of applicant=s permanent residence;
- (4) Telephone number of applicant=s permanent residence;
- (5) Full legal name of any and all business operations owned, managed, or operated by applicant, or for which the applicant is an employee or an agent;
- (6) Full street address of applicant=s regular place of business, if any;
- (7) Any and all business-related telephone numbers of the applicant, including cellular phones and facsimile (fax) machines;
- (8) The type of business for which the applicant is applying for a license;
- (9) Whether the applicant is applying for an annual, 1 to 3 day, weekly or monthly license;
- (10) The dates during which the applicant intends to conduct business;
- (11) Any and all addresses and telephone numbers where the applicant can be reached while conducting business within the county, including the locations where a transient merchant intends to set up his or her business;
- (12) A statement as to whether or not the applicant, or any of his/her employees, or other persons assisting applicant in conjunction with the licensed/registered business operation, has been convicted within the last 5 years of any felony or misdemeanor for violating any state or federal statute or any local ordinance, other than minor traffic offenses;
- (13) A list of the 3 most recent locations where the applicant has conducted business as a peddler or transient merchant;
- (14) Proof of any required state license;
- (15) Written permission of the property owner or the property owner=s agent for any locations to be used by a transient merchant;
- (16) A general description of the items to be sold or services to be provided;
- (17) Any and all additional information as may be deemed necessary by the Shelby County Fiscal Court;
- (18) A photocopy of the applicant=s driver=s license or other form of photo identification;

(19) The license plate number, registration information, vehicle identification number (VIN) and physical description for any vehicles to be used in conjunction with the licensed business operation;

(20) An official records check conducted by the Records Unit of the Administrative Office of the Courts for applicant and all agents, employees or other persons who will be assisting applicant in conjunction with the licensed/registered business operation.

(D) *Fee.* All applications for a license under this chapter shall be accompanied by the nonrefundable license fee established by the Shelby County fee schedule as it may be amended from time to time except that transient merchants who pay a fee pursuant to KRS 365.665 shall not have to pay a license fee as well.

(E) *Procedure.* Upon receipt of the application and payment of the nonrefundable license fee, the Shelby County Clerk=s office will, within 2 regular business days, determine if the application is complete. An application will be considered complete if all required information is provided. If the Shelby County Clerk=s office determines that the application is incomplete, that office must inform the applicant of the required, necessary information that is missing. Within 10 regular business days of receiving a complete application the Shelby County Clerk=s office must issue the license unless grounds exist for denying the license application under ' 113.04, in which case the Shelby County Clerk=s office must deny the request for a peddler or transient merchant license. If the Shelby County Clerk=s office denies the application, the applicant must be notified in writing of the decision, the reason for denial and the applicant=s right to appeal the denial by requesting, within 20 days of receiving notice of rejection, a public hearing before Shelby County Fiscal Court. The decision of the Shelby County Fiscal Court following the public hearing may be appealed to Shelby Circuit Court.

(F) *Duration.* An annual license granted under this ordinance shall be valid for 1 calendar year from the date of issuance. All other licenses granted to peddlers and transient merchants under this chapter shall be valid only during the time period indicated on the license.

(G) *License exemptions.*

(1) No license shall be required for any person to sell or attempt to sell, or to take or attempt to take orders for, any product grown, produced, cultivated or raised on any farm by that person.

(2) No license shall be required for any person going from house-to-house, door-to-door, business-to-business, street-to-street, or any other type of place-to-place movement for the primary purpose of exercising that person=s state or federal constitutional rights such as the freedom of speech, freedom of the press, freedom of religion, and the like. This exemption will not apply if the person=s exercise of constitutional rights is merely incidental to what would properly be considered a commercial activity.

(3) Participants in fairs and convention center activities when the participants= businesses are conducted for amusement, entertainment or in conjunction with said fairs or convention center activities.

(4) Any general sale, fair, auction or bazaar sponsored by any religious, educational, public service or charitable organization.

(Ord. 09-06-02, passed 9-6-2011)

' 113.04 LICENSE INELIGIBILITY.

The following shall be grounds for denying a peddler or transient merchant license:

(A) The failure of an applicant to obtain and demonstrate proof of having obtained any required state license;

(B) The failure of an applicant to truthfully provide any information required as part of the application process;

(C) The failure of an applicant to sign the license application;

(D) The failure of an applicant to pay the required fee at the time of application;

(E) A conviction within the past 5 years of the date of application for any violation of any federal or state statute or regulation, or of any local ordinance, which adversely reflects upon the person=s ability to conduct the business for which the license is being sought in a professional, honest and legal manner. Such violations shall include, but are not limited to, burglary, theft, larceny, swindling, fraud, unlawful business practices, and any form of actual or threatened physical harm against another person;

(F) The revocation within the past 5 years of any license issued to an applicant for the purpose of conducting business as a peddler, solicitor, or transient merchant;

(G) When an applicant has a bad business reputation. Evidence of a bad business reputation shall include, but is not limited to, the existence of more than 3 complaints against an applicant with the Better Business Bureau, the Kentucky Attorney General=s Office or other state attorney general=s office, or other similar business or consumer rights office or agency, within the preceding 12 months, or 3 complaints filed with the Shelby County Clerk=s office against an applicant within the preceding 5 years.

(Ord. 09-06-02, passed 9-6-2011)

' 113.05 LICENSE SUSPENSION AND REVOCATION.

(A) *Generally.* Any license issued under this ordinance may be suspended or revoked at the discretion of the Shelby County Clerk=s office for violation of the following:

(1) Subsequently obtained knowledge by the Shelby County Clerk=s office of fraud, misrepresentation or incorrect information provided by an applicant on an application form;

(2) Fraud, misrepresentation or false statements by the applicant made during the course of the licensed activity;

(3) Subsequent conviction of any offense to which would have resulted in denial of the license during the application process under ' 113.04;

(4) Engaging in any prohibited activity as provided in ' 113.08;

(5) Violation of any other provision of this chapter.

(B) *Multiple persons under 1 license.* The suspension or revocation of any license issued for the purpose of authorizing multiple persons to conduct business as peddlers or transient merchants on behalf of this licensee shall serve as a suspension or revocation of each authorized person=s authority to conduct business as a peddler or transient merchant on behalf of the licensee whose license is suspended or revoked.

(C) *Notice.* Prior to revoking or suspending any license issued under this chapter, the Shelby County Clerk=s office shall provide a license holder with written notice of the alleged violations and inform the licensee of his or her right to a hearing on the alleged violation. Notice shall be delivered in person or by mail to the permanent residential address listed on the license application, or if no residential address is listed, to the business address provided on the license application.

(D) *Public hearing.* Upon receiving the notice provided in division (C) above, the licensee shall have the right to request a public hearing before the Shelby County Fiscal Court. If no request for a hearing is received by the Shelby County Clerk=s office within 10 days following the service of the notice, the Shelby County Clerk=s office may proceed with the suspension or revocation. For the purpose of mailed notice, service shall be considered complete as of the date the notice is placed in the mail. If a public hearing is requested within the stated time frame, a hearing shall be scheduled within 20 days from the date of the request for public hearing. The fiscal court shall notify the licensee of its decision within 3 business days of the hearing.

(E) *Emergency.* If, in the discretion of the Shelby County Clerk or the Shelby County Fiscal Court, imminent harm to the health or safety of the public may occur because of the actions of a peddler or

transient merchant licensed under this chapter, the Fiscal Court may immediately suspend the person=s license and provide notice of the right to hold a subsequent public hearing as prescribed in division (C) above.

(F) *Appeal*. Any person whose license is suspended or revoked under this section shall have the right to appeal that decision to Shelby Circuit Court.
(Ord. 09-06-02, passed 9-6-2011)

' 113.06 LICENSE TRANSFERABILITY.

No license issued pursuant to this chapter shall be transferred to any other person.
(Ord. 09-06-02, passed 9-6-2011)

' 113.07 REGISTRATION.

(A) All solicitors and professional fundraisers shall be required to register with the County Judge Executive=s office prior to engaging in those activities. Registration shall be made on the same form required for a license application, but no fee shall be required. Subject to ' 113.08, and immediately upon completion of the registration form, the County Clerk=s office shall issue to the registrant a certificate of registration as proof of the registration. Certificates of registration shall be non-transferable.

(B) The provisions of ' ' 113.04 and 113.05 shall apply to solicitors and professional fundraisers as well.

(C) Individuals that will be engaging in non-commercial door-to-door advocacy shall not be required to register.
(Ord. 09-06-02, passed 9-6-2011)

' 113.08 PROHIBITED ACTIVITIES.

No peddler, solicitor, transient merchant, professional fundraiser, or other person engaged in other similar activities shall conduct business in following manner:

(A) Calling attention to his or her business or the items to be sold by means of blowing any horn or whistle, ringing any bell, crying out, or by any other noise, so as to be unreasonably audible within an enclosed structure;

(B) Obstructing the free flow of traffic, either vehicular or pedestrian, on any street, sidewalk, alleyway, or other public right-of-way;

(C) Conducting business in a way as to create a threat to the health, safety or welfare of any specific individual or the general public;

(D) Conducting business before 8:00 a.m. or after 8:00 p.m.;

(E) Failing to provide proof of license, or registration, and identification when requested;

(F) Using the license or registration of another person;

(G) Alleging false or misleading statements about the products or services being sold, including untrue statements of endorsement or cost. No peddler, solicitor, professional fundraiser or transient merchant shall claim to have the endorsement of the county based on the county having issued a license or certificate of registration to that person;

(H) Remaining on the property of another when requested to leave.
(Ord. 09-06-02, passed 9-6-2011)

' 113.09 EXCLUSION BY PLACARD.

(A) Unless specifically invited by the property owner or tenant, no peddler, solicitor, transient merchant, professional fundraiser, or other person engaged in other similar activities shall enter onto the property of another for the purpose of conducting business as a peddler, solicitor, transient merchant similar activity when the property is marked with a sign or placard meeting the following requirements:

(1) At least 4 inches long;

(2) At least 4 inches wide;

(3) With print of at least 48 point in size;

(4) Stating A No Peddlers, Solicitors or Transient Merchants,@ or APeddlers, Solicitors and Transient Merchants Prohibited,@ or some other comparable statement.

(B) No person other than the property owner or tenant shall remove, deface or otherwise tamper with any sign or placard under this section.
(Ord. 09-06-02, passed 9-6-2011)

' 113.99 PENALTY.

Any person found in violation of any provision of this chapter shall be guilty of a Class B misdemeanor.

(Ord. 09-06-02, passed 9-6-2011)